



Legal Guide to Buying Real Estate in the Czech Republic



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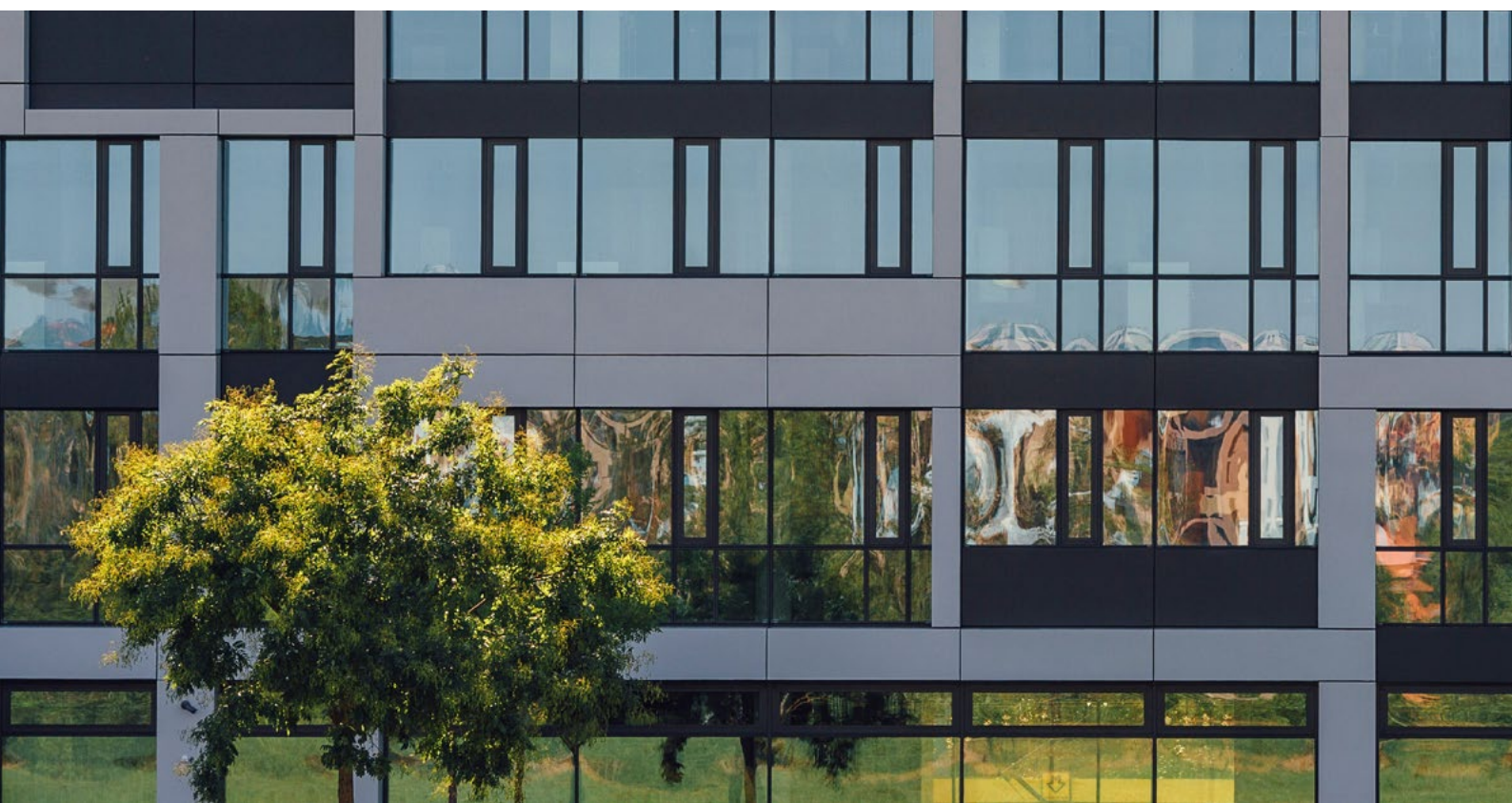




Introduction

This guide is intended for those who are planning to purchase real estate in the Czech Republic. We describe the basic legal aspects of a real property transaction, and we recommend steps to take to minimise risk when buying real property and to ensure that the transaction is successful.

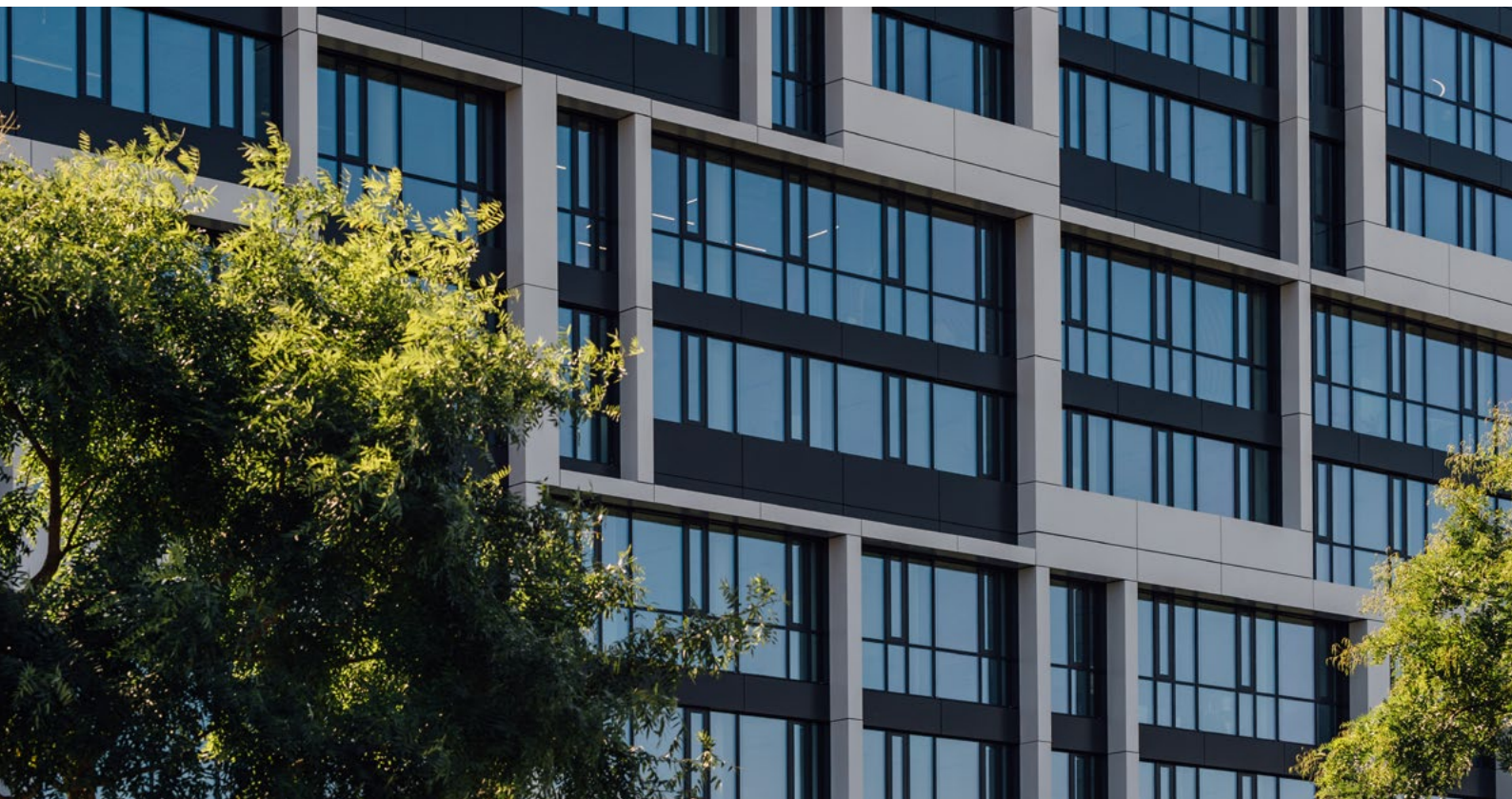
The focus of this guide is on clients from abroad who come to the Czech Republic intending to buy real property, and who come into contact with the Czech real estate market for the first time.





A brief introduction to related legislation

Under section 1105 of Act no. 89/2012 Coll., Civil Code, as amended ('Civil Code'), if the right of ownership to real property registered in a public register is being transferred, ownership of the property will be acquired by registration in such a register. Thus, in order to acquire real estate ownership in the Czech Republic, the conclusion of a Purchase Contract alone will not suffice. The Purchase Contract must be accompanied by the registration of the buyer's right of ownership in the Land Register. If the Land Registry approves the registration, the right of ownership will be transferred with legal effect from the moment when the application for registration was submitted to the Land Registry. The proceedings on approving the registration of a right of ownership in the Land Register are governed by Act no. 265/2013, Coll., on the Land Register, as amended ('Land Register Act').





THE REAL ESTATE PURCHASE PROCESS

Prior to the conclusion of a Purchase Contract (and also prior to the conclusion of a Reservation Contract and/or Preliminary Contract of Sale, if applicable), we recommend checking the factual and legal status of the property in question.

It is recommended that the buyer carries out a detailed viewing of the property before the purchase to ensure that it does not have any material defects. For this purpose, it is sensible to hire a building surveyor, who is more likely than a layperson to discover any potential defects.

Regarding the legal status of the property, the property should not be encumbered by any third-party rights. These may include easements, liens, pre-emptive rights, rights to build, etc. Any rights in rem encumbering the property can be ascertained from an entry from the Land Register relating to the property in question. An entry from the Land Register also allows the buyer to verify that the seller is the real owner of the property.

As part of the legal check, we also recommend reviewing the acquisition title (e.g., a contract or a decision of an authority) based on which the seller became the owner of the property which the buyer wishes to buy. It is recommended to check that the acquisition title is valid, and it is also possible to ascertain the conditions under which the seller acquired the property from the acquisition title.

If the property is a flat or an apartment (housing unit), it is also advised to check the Declaration of the Owner of the Building. This provides for example information about the floor area of the flat/apartment (housing unit), whether ownership of the flat/apartment (housing unit) includes the exclusive use of any of the shared parts of the building etc.

Buyers should be aware that the documents listed above will not reveal some potential legal defects of the property being bought. These include for example potential third-party tenancy rights or other rights of use. The seller should expressly declare in the Purchase Contract that the property being sold is not encumbered by such potential legal defects. The seller's declaration concerning the absence of defects should also include material defects and legal defects which can be ascertained from any of the documents listed above.

Once the buyer has carried out a factual and legal check of the real property being bought and the state of the property is acceptable for them, the next step is to prepare contractual documentation and gradually complete the whole transaction.

RESERVATION CONTRACT

The first contractual document which can be concluded during the process of purchase of real estate is a Reservation Contract (also called an Agreement for the Payment of a Reservation Deposit, Agreement to Reserve a Property, etc.). A Reservation Contract is a (non-obligatory) initial step prior to the conclusion of a Preliminary Contract of Sale, or of a Purchase Contract itself.

A Reservation Contract is usually concluded where the purchase is being conducted via a property broker. However, it can also be concluded in other situations, such as where the property is being sold by a developer. If a Reservation Contract is being concluded, we recommend that its contractual parties are both of the parties to the future Purchase Contract (i.e. not only the future buyer and the property broker). A Reservation Contract should contain a mutual obligation to conclude a Preliminary Contract of Sale or the actual Purchase Contract providing for the transfer of the property in question. In a Reservation Contract, the future seller should undertake not to sell the property in question to another interested party for a certain period of time, and not to offer the property for sale during this period.

A Preliminary Contract of Sale or the actual Purchase Contract should be specified in the Reservation Contract, i.e., the Reservation Contract should specify exactly the object of the transfer, the purchase price, and the method of its payment (normally via legal custody provided by a notary, a bank or an attorney at law), the date of handover of the property, etc. A Reservation Contract also normally includes sanctions in the event that essential obligations arising from the contract are breached.

PRELIMINARY CONTRACT OF SALE

A Preliminary Contract of Sale is another possible step prior to the conclusion of a Purchase Contract. The conclusion of a Preliminary Contract of Sale is also not obligatory. It is usually concluded where, for any reason, it is not yet possible to conclude the actual Purchase Contract, e.g., because the building or flat/apartment (housing unit) being bought is yet to be finished, the buyer needs to obtain a mortgage to pay the purchase price or its part, the buyer needs to obtain confirmation of possibility to repay a loan secured by an existing lien on the relevant property, etc.

In a Preliminary Contract of Sale, the contractual parties undertake to conclude a Purchase Contract in the future, at the request of a contractual party and after stipulated conditions are fulfilled. The right to request the other contractual party to conclude a Purchase Contract can be agreed upon for the benefit of both parties, or for the benefit of one party only. If the entitled party does not request the other party within the specified period to conclude a Purchase Contract, the obligation to conclude the Purchase Contract expires. If the entitled party requests the other party to conclude a Purchase Contract, the obligated party must conclude it.

The wording of the actual Purchase Contract approved by the parties should form part of the Preliminary Contract of Sale.

The buyer can pay the whole or a part of the purchase price via a mortgage loan secured by a lien established on the property being bought (or on another real property). In that case, the Preliminary Contract of Sale should include the seller's obligation to conclude a Lien Agreement with the bank providing the mortgage loan, which will create a lien for the benefit of the bank.



PURCHASE CONTRACT

The actual transfer of the right of ownership to the real property takes place on the basis of a Purchase Contract. A Purchase Contract should contain these contractual arrangements, in particular:

1. Correct identification of contractual parties (name and surname, date of birth, permanent address, and birth number, if there is one). If the party is a legal person, the details must correspond with their Commercial Register registration details, and the contract must be signed by a person authorised to do so.
2. Correct identification of the real property being sold.
3. Expression of the will of contractual parties to transfer the right of ownership to the property from the seller to the buyer.
4. The property's purchase price and method of its payment. It is always recommended that the purchase price is paid via legal custody (escrow) provided by an attorney at law, a notary, or a bank. An agreement on how to proceed if the purchase price is not paid should also form part of the Purchase Contract. In such circumstances, the seller should have the right to withdraw from the Purchase Contract, and they should also be entitled to a reasonable contractual penalty.
5. Essential declarations by the seller relating to the property being transferred and to themselves, and essential declarations by the buyer relating to themselves. If a declaration later turns out to be incorrect, we recommend agreeing on an obligation of the affected party to rectify the situation within a reasonable time and, if this obligation is breached, a reasonable contractual penalty and the possibility of the other party to withdraw from the Contract or to exercise other rights arising from liability for defects should be stipulated.
6. Conditions that have to be fulfilled before submitting the Purchase Contract to the Land Registry. The Contract should be submitted to the Land Registry only after the purchase funds are in legal custody (escrow). Only then the seller can be sure that they do not transfer the property to the buyer without getting paid.
7. Date of handover of the property and sanctions for the event that the property is not handed over in time or properly. Before the agreed date, the seller should also deregister their permanent residence from the property, and registered office of any persons who have it there with the seller's consent.
8. Officially certified signatures of the contractual parties (signatures need to be certified on the counterpart of the Purchase Contract which will be used in proceedings to approve the registration of the buyer's right of ownership in the Land Register).



REGISTRATION IN THE LAND REGISTER

As stated above, the Civil Code provides that if there is a transfer of the right of ownership to real property registered in a public register, the property is acquired into ownership by registration of the buyer's right of ownership in such register. The relevant register for real property is the Land Register.

An application to register a right of ownership in the Land Register must be prepared on the prescribed form, which must append a registration deed. This is a deed on the basis of which the ownership right is to be registered in the Land Register (i.e., in our case, the Purchase Contract). The counterpart of the Purchase Contract submitted to the Land Registry must contain the officially certified signatures of its parties. The actual application for registration in the Land Register must satisfy the requirements specified in section 14 of the Land Register Act.

An application to register a right of ownership in the Land Register must be prepared on the prescribed form, which must append a registration deed. This is a deed on the basis of which the right is to be registered in the Land Register (i.e., in our case, the Purchase Contract). The counterpart of the Purchase Contract submitted to the Land Registry must contain the officially certified signatures of its parties. The actual application for registration in the Land Register must satisfy the requirements specified in section 14 of the Land Register Act.

No later than on the day following the day of receipt by the Land Registry of an application to

register the right of ownership, the Land Registry will notify the owner of the property being transferred that there is a legal change; such notification will be sent to the owner's permanent residence address (or, if the owner is a foreigner, to their home address abroad).

In proceedings to approve the registration of a right of ownership, the Land Registry will examine whether the Purchase Contract (as a registration deed) meets the requirements of a deed for registration in the Land Register, whether its content forms a basis for the proposed registration, and whether legal conduct has taken place in the prescribed (i.e., written) form. The Land Registry will further ascertain whether a party's ability to make dispositions with the property is not limited, whether the content of the deed and comparison of the deed with existing records in the Land Register does not show a reason for which the legal conduct is invalid, and whether the proposed registration follows on from existing records in the Land Register. The Land Registry examines these matters as per the state of affairs existing when the application for registration was filed.

If all conditions necessary for the registration of the right of ownership in the Land Register are met, the Land Registry shall approve it – no sooner than 20 days from the day when the notification of a legal change is sent to the owner of the property being transferred. The right of ownership is subsequently registered retrospectively to the moment when the application for registration was received by the respective Land Registry.

LEGAL CUSTODY (ESCROW) OF THE PURCHASE PRICE

As stated above, we recommend that the purchase price is paid via legal custody (escrow). The purpose of a purchase price escrow is to give the seller a guarantee that once the right of ownership to the property being sold has been transferred to the buyer, the seller will be paid, and to give the buyer certainty that if they do not become within a certain period the owner of the property which is free of legal defects recorded in the Land Register, the purchase price will be returned to the buyer out of the escrow.

To deposit the purchase price into escrow, services of a notary, an attorney at law, or a bank may be used. Where we are acting for our clients in the actual purchase of a property, it is more convenient and generally also cheaper for them to use our services to deposit purchase funds into escrow. Apart from drafting the actual Escrow Contract, we will arrange the opening of a deposit account, check all documents, inform the contractual parties of movements on the deposit account, issue a confirmation of deposit of funds in the escrow account, and, most importantly, we will ensure that the purchase price is paid out of escrow under the terms of the Escrow Contract.

SUMMARY



Based on our experience, when buying real property, we recommend not to skip the factual and legal check of the property being bought, and to have transactional documentation drafted professionally by a law firm that specialises in transfers of real property. You will thus avoid mistakes that can be costly in real property transactions, as well as problems in proceedings before the Land Registry, which may result in the whole transaction being delayed in order to correct contractual documentation and to sign it again.

As stated above, we also recommend depositing purchase funds into escrow which will give you as the buyer certainty that the seller will receive the purchase funds only after you have become the owner of the property which is unencumbered by legal defects registered in the Land Register.

If you decide to use the services of our law firm, you will be able to rely on our professionalism and reliability. We work quickly and effectively for our clients. We will take care of the realisation of the entire real property transaction, from initial consultation through the checking of all supporting documents (entries in the Land Register, acquisition titles, etc.) up to the drafting of the actual contractual documentation, including the application for registration of a right of ownership in the Land Register, representation in registration proceedings before the Land Register, and purchase funds escrow.



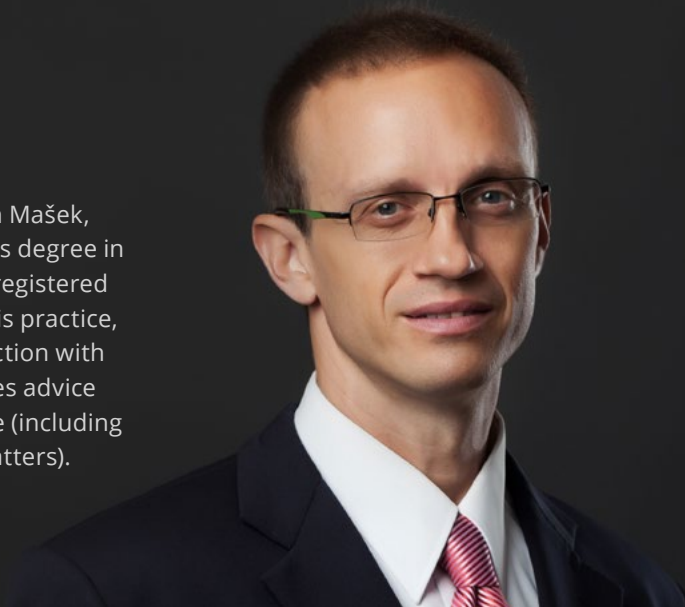
Conclusion

The Czech Republic has a relatively well-developed real property market, and buying a property should be a surprise-free process for clients if the recommendations set out in this guide are followed. However, foreign clients, in particular, may encounter practical issues, which may include a language barrier when agreeing on the terms of a transaction, or communication in the Czech language when dealing with the Land Registry. Clients can remove these barriers by appointing an experienced professional as their representative. This can be in particular an attorney at law who specialises in providing legal services in relation to real property transfers.

Legal services relating to real property transactions are one of the main specialisations of our law firm. We are available to advise our clients and to become their representatives who will help them successfully purchase real property in the Czech Republic. Do not hesitate to contact us at any time. You can contact us by phone, email, and online; we are also available for meetings in person in Prague and Bratislava.

About the author

Mgr. Daniel Mašek is a founding partner of the law firm Mašek, Kočí, Aujezdský (MKA Nosko). He completed his Master's degree in Law at the Law Faculty of Charles University, and he is registered on the roll of lawyers of the Czech Bar Association. In his practice, Daniel specialises in civil law, most frequently in connection with real estate transactions. In his legal practice, he provides advice on development projects and acquisitions of real estate (including the preparation of complex documentation in these matters).



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